

APPEAL NO. 031170
FILED JULY 2, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on April 17, 2003. The hearing officer resolved the disputed issue by deciding that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the first and second quarters. The appellant (carrier) appealed, arguing that the hearing officer's SIBs determinations are against the great weight and preponderance of the evidence. The appeal file does not contain a response from the claimant.

DECISION

Affirmed.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). At issue in this case is whether the claimant met the direct result requirement of Section 408.142(a)(2) and Rule 130.102(b)(1), and the good faith job search requirements of Section 408.142(a)(4) by meeting the requirements of Rule 130.102(d)(5) and (e).

Rule 130.102(c) provides that an injured employee has earned less than 80% of the employee's average weekly wage as a direct result of the impairment from the compensable injury if the impairment from the compensable injury is a cause of the reduced earnings. The hearing officer was persuaded by the claimant's testimony and the medical document of his treating doctor that his unemployment during the qualifying periods in dispute was a direct result of his impairment. We have reviewed the hearing officer's direct result determination and find that it is supported by sufficient evidence to be affirmed. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Rule 130.102(d)(5) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has provided sufficient documentation as described in subsection (e) of Rule 130.102 to show that he or she has made a good faith effort to obtain employment. Rule 130.102(e) provides that, except as provided in subsection (d)(1), (2), (3) and (4) of Rule 130.102, an injured employee who has not returned to work and is able to return to work in any capacity shall look for employment commensurate with his or her ability to work every week of the qualifying period and document his or her job search efforts. That subsection then lists information to be considered in determining whether a good faith effort has been made. The claimant testified that he searched for employment every week of the qualifying periods in dispute. The carrier contended that there were two weeks during the first quarter qualifying period that the claimant failed to document a job search. The claimant explained that the Texas Workers' Compensation Commission did not properly copy his Application for [SIBs] (TWCC-52) application for the first quarter at the time he submitted his documentation and that he rectified that

discrepancy by submitting supplemental documentation to his TWCC-52 for the first quarter. The hearing officer determined that the claimant's testimony regarding his job searches was credible and supported by documentary evidence.

Whether the claimant made a good faith effort to obtain employment commensurate with his ability to work during the qualifying periods in dispute was a fact question for the hearing officer to determine from the evidence presented. We conclude that the hearing officer's decision is supported by sufficient evidence and that it is not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain, supra.

The true corporate name of the insurance carrier is **AMERICAN MOTORISTS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Veronica Lopez-Ruberto
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Thomas A. Knapp
Appeals Judge